

[COUNSEL LISTED ON SIGNATURE PAGE]

**UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA**

NATIONAL ABORTION FEDERATION
(NAF),

Plaintiff,

vs.

THE CENTER FOR MEDICAL
PROGRESS; BIOMAX PROCUREMENT
SERVICES, LLC; DAVID DALEIDEN (aka
"ROBERT SARKIS"); and TROY
NEWMAN,

Defendants.

) Case No. 3:15-cv-3522 (WHO)

)

) Hon. William H. Orrick, III

)

) JOINT STIPULATION AND ORDER
) REGARDING DISCOVERY
) SCHEDULE, MOTION SCHEDULE,
) AND EXTENSION OF THE TRO

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STIPULATION

Pursuant to Local Rules 6-2 and 7-12, National Abortion Federation (“NAF” or “Plaintiff”) and Defendants Center for Medical Progress, Biomax Procurement Services, LLC, David Daleiden (aka “Robert Sarkis”) and Troy Newman (“Defendants”), file this stipulation to, among other things, (1) effect a limited stay of discovery and deadlines associated with certain calendared motions pending resolution of the parties’ dispute regarding the scope and applicability of asserted Fifth Amendment protections, (2) slightly adjust the briefing schedule set by the Court to resolve whether the Fifth Amendment privilege may be invoked by the corporate entities, (3) confirm that the Court’s Temporary Restraining Order (“TRO”) will remain in effect pending the Court’s final disposition on Plaintiff’s preliminary injunction motion, subject to Court-ordered clarification or modification, if any, and (4) ensure that certain individuals who obtained NAF confidential information and are currently known only to Defendants agree to be bound by the TRO as if they were named parties in the suit:

WHEREAS, on July 31, 2015, NAF filed its Complaint and moved for a temporary restraining order, order to show cause, preliminary injunction, and motion for expedited discovery (Docket Nos. 1, 3, 5);

WHEREAS, on the same day, the Court granted a temporary restraining order and order to show cause, setting a hearing for August 3, 2015 (Docket No. 15);

WHEREAS, on August 3, 2015, the Court extended the temporary restraining order to remain in effect pending resolution of NAF’s preliminary injunction motion, finding that Plaintiff was likely to succeed on the merits of its claims and that the evidence presented was sufficient to show irreparable injury for the purposes of a temporary restraining order (Docket No. 27);

WHEREAS, on the same day, the Court granted Plaintiff’s motion for expedited discovery, finding good cause to grant discovery because it was necessary for the preliminary injunction motion (Docket No. 27);

WHEREAS, on the same day, the Court ordered Plaintiff to file a preliminary injunction motion by August 19, 2015, and set a hearing on that motion for August 27, 2015 (Docket No. 27);

1 WHEREAS, on August 5, 2015, the parties exchanged discovery requests, including
2 document requests, interrogatories, and deposition notices;

3 WHEREAS, on August 6, 2015, the parties submitted a stipulated request to extend the
4 preliminary injunction schedule to accommodate conflicts in the calendars of the witnesses, to
5 accommodate travel schedules for certain counsel of record, and to allow the parties more time to
6 engage in discovery and prepare papers in connection with Plaintiff's preliminary injunction
7 motion, and the Court granted that request (Docket No. 34);

8 WHEREAS, the Court's August 6, 2015 stipulated order set a deadline of September 4 to
9 complete discovery relating to Plaintiff's preliminary injunction motion, and set an August 20,
10 2015 deadline for the parties to submit a joint discovery letter concerning any discovery disputes
11 relating to Plaintiff's motion and a hearing on any such disagreements on August 21 (Docket No.
12 34);

13 WHEREAS, on August 17, 2015, Defendants Center for Medical Progress, Biomax, and
14 David Daleiden (aka "Robert Sarkis") filed a 65-page motion to strike the complaint and to dismiss
15 the case under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (Docket No. 66-
16 1);

17 WHEREAS, on August 18, 2015 the Court set a briefing schedule on Defendants' motion to
18 strike the complaint and to dismiss and ordered that the discovery previously ordered in connection
19 with Plaintiff's preliminary injunction motion was unaffected by Defendants' motion to strike
20 (Docket No. 70);

21 WHEREAS, on August 19, 2015, the parties submitted a joint letter brief in which
22 Defendants maintained that all discovery was stayed as a result of the motion to strike the
23 complaint (Docket No. 74);

24 WHEREAS, on August 21, 2015, the Court issued an order holding that there was no merit
25 to Defendants' automatic stay argument because a stay would conflict with Rule 56 as well as the
26 Court's prior order finding good cause for preliminary injunction discovery under Rule 26 (Docket
27 No. 78);

1 WHEREAS, on the same day, the Court found that Plaintiff's written discovery requests
2 were narrow and appropriate, and directed Defendants to respond to those requests by August 25,
3 2015, including with a production of documents (Docket No. 78);

4 WHEREAS, on the same day, the Court acknowledged that Defendants had also issued
5 discovery requests to Plaintiff and stated that the parties' discovery obligations would be
6 reciprocal;

7 WHEREAS, on the same day, the Court directed that the depositions of Troy Newman,
8 David Daleiden, and a corporate representative of Center for Medical Progress/Biomax
9 Procurement Services LLC of three and a half hours be completed by September 4, 2015 (Docket
10 No. 78);

11 WHEREAS, on the same day, the Court ordered the parties to meet and confer concerning
12 any lingering disputes about Plaintiff's discovery requests or scheduling and to report back to the
13 Court when the discussion was concluded (Docket No. 78);

14 WHEREAS, on the same day, in the meet-and-confer ordered by the Court, counsel for
15 Defendants advised Plaintiff that each of them – including counsel for the corporate entities Center
16 for Medical Progress and Biomax Procurement Services LLC – would advise their clients to assert
17 their Fifth Amendment right against self-incrimination, including with respect to production of
18 documents, answers to interrogatories, and deposition testimony;

19 WHEREAS, on the same day, the parties agreed that in light of Defendants' anticipated
20 Fifth Amendment objections, the schedule on Plaintiff's preliminary injunction motion and certain
21 Defendants' motion to strike and to dismiss the Complaint needed to be adjusted, and that the
22 parties and the Court would benefit from an early resolution on the issue of whether Center for
23 Medical Progress and Biomax Procurement Services LLC could object to discovery on the basis of
24 the Fifth Amendment (Docket No. 78);

25 WHEREAS, the parties initially agreed – and the Court ordered – a briefing schedule on the
26 assertion of the Fifth Amendment by Center for Medical Progress and Biomax Procurement
27 Services LLC that would have required Plaintiff to file an opposition to that motion on September
28

7, 2015 (Labor Day), and the parties now wish to move the proposed deadlines for the responsive brief to accommodate the holiday;

WHEREAS, two prior modifications have been made to the schedule in this matter, including: (1) the parties stipulated to a schedule extending the briefing and hearing schedule on NAF's preliminary injunction motion (Doc. 34), which was granted on August 6, 2015 (Doc. 34); and (2) the parties stipulated to shorten time regarding Defendants' two motions for clarification (Doc. 60-3 & 61), which was filed with the Court on August 20 (Dkt. No. 75) and granted on the same day (Dkt. No. 76).

NOW THEREFORE, IT IS HEREBY STIPULATED and agreed to by and between the parties, subject to the approval of the Court, that:

1. The briefing and hearing schedule on Plaintiff's preliminary injunction motion is vacated;

2. The briefing and hearing schedule on Defendants' motion to strike and to dismiss the Complaint is vacated;

3. The current briefing and hearing schedule on Defendants' motion to clarify the temporary restraining order (Dkt Nos. 60-3 and 61) remains in effect;

4. The discovery schedule set by the Court on Plaintiff's preliminary injunction motion is hereby vacated. The parties shall meet and confer on a new schedule after the Court issues its order on the motion regarding the assertion of the Fifth Amendment by Center for Medical Progress and Biomax Procurement Services LLC.

5. Regarding Center for Medical Progress and Biomax Procurement Services LLC's assertion of the Fifth Amendment, Defendants shall submit an opening brief on **August 31, 2015**. Plaintiff shall submit any opposition by **September 8, 2015**. Defendants shall submit a reply by **September 11, 2015**. The Court shall set a hearing on this motion at its discretion.

6. The Court's temporary restraining order (as modified, if at all, by the pending motions for clarification or any subsequent modification or clarification), shall remain in effect through the Court's final disposition on NAF's preliminary injunction motion.

7. The individuals that the Complaint alleged identified themselves with the following aliases to gain access to Plaintiff's annual meetings agree to be bound by the temporary restraining order as if they were named parties in the suit: Susan Tennenbaum, Brianna Allen, Rebecca Wagner, Adrian Lopez, and Philip Cronin. Defendants shall provide each of the foregoing individuals with a copy of the Court's temporary restraining order, with any order issued upon this stipulation, and with any future order that affects, modifies, extends or alters the TRO in any way

Dated: August 24, 2015

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1 Dated: August 24, 2015

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20 Dated: August 24, 2015

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ATTESTATION OF E-FILED SIGNATURE

I, Derek F. Foran, am the ECF User whose ID and password are being used to file this
JOINT STIPULATION AND [PROPOSED] ORDER REGARDING DISCOVERY SCHEDULE,
MOTION SCHEDULE, AND EXTENSION OF THE TRO. In compliance with General Order 45,
X.B., I hereby attest that Carly Gammill and D. John Sauer concur in this filing.

Dated: August 24, 2015

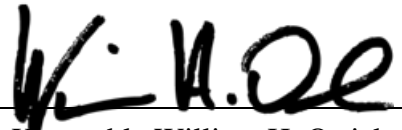
/s/ Derek Foran
DEREK F. FORAN

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

The hearing on the Fifth Amendment issues referred to in paragraph 5 of the above Stipulation shall be held on **September 18, 2015** at 10 a.m. in Courtroom 2, 17th floor.

Dated: August 25, 2015

A handwritten signature in black ink, appearing to read "W. H. Orrick, III". The signature is written in a cursive, stylized font.

Honorable William H. Orrick, III
United States District Court